TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 193.

AMES E. YEATMAN AND JAMES C. MOORE, ASSIGNEES IN BANKRUPTCY OF JAMES J. O'FALLON AND SAMUEL A. HATCH, COMPOSING THE FIRM OF O'FALLON & HATCH, PLAINTIFFS IN ERROR,

vs.

L. F. GÉNÉRÉS.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 12, 1875.

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INDEX.

	Original.	Print.
Petition	1	1
Citation	6	2
Marshal's return	7	3
Answer	7	3
Waiver of jury	9	4
Continuance of case	10	4
Hearing and continuance of case	11	5
submission of case	11	5
Order: case re-instated and fixed	12	5
Motion and order: case continued	13	6
Hearing and continuance of case	14	7
submission of case	14	7
Judgment	15	8
Statement of facts by the court	16	8
Plaintiff's bill of exceptions	29	12
Motion and order making Yeatman and Moore parties plaintiffs	30	13
Deed of assignment, Exhibit A	31	14
Motion and order granting writ of error	35	15
Bond for writ of error	36	15
Assignment of errors	38	16
Clerk's certificate	41	17
Writ of error	42	17
Citation	43	18

1 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

ROBERT K. WOODS, ASSIGNEE, &C., vs. L. F. GÉNÉRÉS. } No. 6890.

Petition.—Filed January 18th, 1873.

To the hon. the circuit court of the United States for the fifth judicial circuit and district of Louisiana:

The petition of Robert K. Woods, who is a citizen of the State of Missouri, herein acting as assignee in bankruptcy of O'Fallon & Hatch, respectfully shows that the commercial copartnership of O'Fallon and Hatch and the individuals composing said firm, James J. O'Fallon and Samuel A. Hatch, were adjudged bankrupts as a firm and individually by the district court of the United States for the eastern district of Missouri, under and in virtue of the act of Congress approved March 2d, 1867, entitled "An act to establish a uniform system of bank-
2 ruptcy throughout the United States," on the 27th day of November, A. D. 1871; that on the 20th day of May, A. D. 1872, your petitioner was duly appointed assignee of said bankrupt firm and the members thereof aforesaid.

That, on the 20th day of May aforesaid, all the property and rights of property of every description, belonging to said bankrupts, or in which they were interested, was by proper deed of assignment conveyed by Lucien Eaton, register in bankruptcy for said district court of Missouri, to your petitioner as assignee for said partnership and individual bankrupt estates, all of which will appear from a certified copy of said deed herewith filed.

And, further showing, petitioner complains that L. F. Générés, who is a citizen of the State of Louisiana and resident of New Orleans, is justly and truly indebted to your petitioner, in his capacity as assignee aforesaid, in the full sum of three thousand one hundred and fifteen dollars, and interest thereon at eight per cent. per annum from 28th February, 1872, till paid, for this, to wit, that among the assets properly belonging to said estate of O'Fallon & Hatch at the time they were adjudi-
3 cated bankrupts, and conveyed to petitioner as assignee aforesaid, there were forty-three hundred and twenty $\frac{74}{100}$ of the certificates of indebtedness of the State of Louisiana, which are more particularly described in the schedule hereto attached as part hereof.

Said certificates were then in the possession of the said defendant, L. F. Générés, who has no title to retain same, and has never surrendered same to your petitioner, but still retains them, or has converted them to his own use.

That in the months of January and February, 1872, Leonard Matthews, who at the time was the duly appointed and qualified receiver of said estate of O'Fallon and Hatch in bankruptcy, with full power and authority from the district court of Missouri aforesaid to demand and take possession of said certificates, and to convert the same into money, came to New Orleans, and, after exhibiting his authority to said defendant, demanded and caused to be demanded from defendant the possession of said certificates in order that he might sell the same.

That about February 28th, 1872, the said receiver caused a final de-

mand to be made upon said defendant for the possession of said certificates, which said defendant refused to do; that at the time said demand was made the market-price of said certificates was at least sev-
4 enty-two (72) cents on the dollar in the New Orleans market, and were in great demand.

That when said demand was made the said defendant, L. F. Générés, well knew that said receiver was fully authorized by said district court of Missouri to make the demand and take possession of and sell said certificates, yet he still refuses to deliver same to said Matthews, who was the proper person to take same from him; that said defendant always refused and still refuses to surrender said certificates to the proper representative of said bankrupt estate, and that, in violation of his duty and of the rights of petitioner, he has unlawfully detained said certificates, and has converted same to his own use.

That by said detention and conversion said estate of O'Fallon & Hatch was and is damaged in the full sum of thirty-one hundred and fifteen dollars, and interest on same from said 28th February, 1872, till paid, at the rate of 8 % per annum.

That he still refuses to account for or pay over said warrants of the value of same at aforesaid date of 28th February, 1872, to petitioner, though amicable demand has been made upon him by petitioner.
5 That said defendant therefore owes to petitioner, in his capacity of assignee, the said sum of thirty-one hundred and fifteen dollars, value of said certificates on the 28th day of February, 1872, when demand was made for them, and interest from said date, at 8 % per annum on said sum till paid, and the further sum of three hundred dollars, his attorney's fees in this cause, which he has refused to pay.

Wherefore petitioner prays that said defendant, L. F. Générés, be cited to answer this petition, and that he be condemned to pay to petitioner, as assignee of O'Fallon & Hatch, the sum of thirty-one hundred and fifteen dollars, value of said certificates of indebtedness on 28th February, 1872, and 8 % interest thereon from said last-mentioned date per annum, till paid, and the sum of three hundred dollars, att'ys' fees incurred by petitioner in this suit, and for all costs, and for general relief.

(Signed) GIVEN CAMPBELL,
Att'y for Plaintiff.

6 *Citation.—Issued January 18th*, 1875.

The President of the United States of America to the marshal of the district of Louisiana, greeting:

ROB'T K. WOODS, ASSIGN'S, &C., *vs.* L. F. GÉNÉRÉS. } No. 6890.

You are hereby commanded to summon L. F. Générés, a citizen of the State of Louisiana, to comply with the demand of Robert K. Woods, assignee in bankruptcy of O'Fallon & Hatch, and a citizen of the State of Missouri, contained in the petition of , of which a copy accompanies this citation, or to deliver his answer to the same, in the office of the clerk of the circuit court of the United States, fifth judicial circuit and district of Louisiana, in the city of New Orleans, in ten days after service hereof, or judgment will be rendered against him by default, which delay is increased one day for every ten miles the defend

ant's residence is distant from New Orleans, the place where the court is held.

And that you make due return hereof on the first Monday of February, 1873.

Witness the Hon. Salmon P. Chase, Chief-Justice of the Supreme Court of the United States of America, at the city of New
7 Orleans, this 18th day of January, A. D. one thousand eight hundred and seventy-three, and of the Independence of the United States of America the 97th year.

[SEAL.] (Signed) F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received January 21st, 1873, by the U. S. marshal, and on the 23rd day of same month and year served a copy of within citation and accompanying petition on L. F. Générés, named herein, by handing the same to him in person.

New Orleans, January 23d, 1873.

(Signed) S. W. REED,
D'y U. S. Marshall.

Answer.—Filed February 7th, 1873.

U. S. circuit court, fifth circuit and district of Louisiana.

ROBERT K. WOODS, ASSIGNEE, &C., *vs.* LOUIS F. GÉNÉRÉS. } No. 6890.

Now comes the defendant, Louis F. Générés, and for answer to the petition of Rob't K. Woods, assignee in the above-entitled cause, says he denies all and singular the allegations thereof except such as are hereinafter specially admitted.

8 He denys specially the power and authority of Leonard Matthews as alleged.

Further answering, he saith that he holds a certificate of indebtedness of the State of Louisiana, No. 17, for forty-three hundred and twenty-two $\frac{72}{100}$ dollars; that he acquired the same in due course of business and for a valuable consideration on or about the 2nd day of December, 1870, by virtue of a pledge and pawn, executed in his favor by the firm of O'Fallon and Hatch, of that date, to secure the payment of a promissory note then delivered to him for a valuable consideration and in due course of business, drawn by O'Fallon & Hatch, for twenty-five hundred dollars, payable to the order of said drawers, and by them in like manner endorsed in blank, dated 2nd day of December, 1870, and payable ninety days after date thereof, with eight per cent. interest per annum from maturity; said pledge and pawn was also to secure any renewal or renewals of said note, and the same was from time to time been renewed, the last by a note dated August 7th, 1871, and payable ninety days after date, signed by said O'Fallon and Hatch, by their duly authorized agent, James E. Kelso, and payable to the order of and endorsed in blank
9 by the subscribers, for ($2,500) twenty-five hundred dollars, which is due and unpaid.

Wherefore he prays judgment against said plaintiff, with costs.

(Signed) CLARKE, BAYNE & RENSHAW,
For Defendants.

Waiver of jury.—Filed May 22nd, 1873.

U. S. circuit court, fifth district of Louisiana.

R. K. WOODS, ASSIGNEE, &c., *vs.* LOUIS F. GÉNÉRÉS. } No. 6890.

SAME *vs.* N. O. SAVINGS INSTITUTION. } No. 6886.

SAME *vs.* D'R W. N. MERCER. } No. 6887.

SAME *vs.* J. A. TURNELL. } No. 6888.

SAME *vs.* SAM'L SMITH & CO. } No. 6889.

We agree to waive the jury in these cases, and that the same shall be tried by the court.

(Signed) LEA, FINNEY & MILLER, *For Sam'l Smith & Co.*

(Signed) CLARKE, BAYNE & RENSHAW, *For other Defendants.*

(Signed) GIVEN CAMPBELL, *for Plaintiffs.*

10 *Continuance of case.—Extract from the minutes, May 22d, 1873.*

Circuit court of the United States, fifth circuit and district of Louisiana.
April term, 1873.

NEW ORLEANS, *Thursday, May 22d, 1873.*

Court met pursuant to adjournment.
Present, Hon. E. H. Durell, district judge.

R. K. WOODS, ASSIGNEE, &c., *vs.* LOUIS F. GÉNÉRÉS. } No. 6890.

SAME *vs.* N. O. SAVINGS INSTITUTION. } No. 6886.

SAME *vs.* D'R W'M N. MERCER. } No. 6887.

SAME *vs.* JOHN A. TURNELL. } No. 6888.

SAME *vs.* SAM'L SMITH & CO. } No. 6889.

In the above cases the attorneys this day filed a stipulation waiving the jury, and agreed to try the causes before the court on Monday, 26th instant, at 11 a. m., for which day they are specially assigned.

11 *Hearing and continuance of case.—Extract from the minutes, May 26th, 1873.*

R. K. WOODS, ASSIGNEE, &C., *vs.* L. F. GÉNÉRÉS. } No. 6890.

SAME *vs.* N. O. SAVINGS INSTITUTION. } No. 6886.

SAME. *vs.* D'R W'M N. MERCER. } No. 6887.

SAME *vs.* JNO. A. TURNELL. } No. 6888.

The above cases were called and, by consent of counsel, tried together.
Given Campbell for plaintiff.
Clarke, Bayne & Renshaw for defendants.
When, after hearing the pleadings, evidence, and argument, the further hearing is continued till to-morrow at 11 a. m.

Hearing and submission of case.—Extract from the minutes of May 27th, 1873.

R. K. WOODS, ASSIGNEE, &C., *vs.* L. F. GÉNÉRÉS. } No. 6890.

SAME *vs.* N. O. SAVINGS INSTITUTION. } No. 6886.

12 SAME *vs.* D'R W'M N. MERCER. } No. 6887.

SAME *vs.* JNO. A. TURNELL. } No. 6888.

The above cases were resumed, and, after hearing further evidence and arguments, the court took time to advise.

Order: case re-instated and fixed.—Extract from the minutes, December 9th, 1873.

Circuit court of the United States, fifth circuit and district of Louisiana.
November term, 1873.

NEW ORLEANS, *Tuesday, Dec'r 9th*, 1873.

Court met pursuant to adjournment.
Present, Hon. E. H. Durell, district court.

R. K. WOODS, ASSIGNEE, &C., *vs.* L. F. GÉNÉRÉS. } No. 6890.

SAME *vs.* N. O. SAVINGS INSTITUTION. } No. 6886.

SAME *vs.* D'R W'M N. MERCER. } No. 6887.

SAME *vs.* JNO. A. TURNELL. } No. 6888.

13 SAME *vs.* SAM'L SMITH & CO. } No. 6889.

Ordered, that the above causes, submitted at the last term of court, be re-instated for further argument on the 30th instant at 11 a. m., and that all the parties be notified thereof.

Motion and order: case continued.—Extract from the minutes, January 10, 1874.

R. K. WOODS, ASSIGNEE, &C., *vs.* L. F. GÉNÉRÉS. } No. 6890.

SAME *vs.* N. O. SAVINGS INSTITUTION. } No. 6886.

SAME *vs.* D'R W. N. MERCER. } No. 6887.

SAME *vs.* JNO. A. TURNELL. } No. 6888.

SAME *vs.* SAM'L SMITH & CO. } No. 6889.

On motion of Given Campbell, esq., attorney for plaintiff, ordered, that the above cases be set for further argument on the 16th instant at 11 a. m., and that defendants be notified thereof.

14 *Hearing and continuance of case.—Extract from the minutes, January 16th, 1874.*

R. K. WOODS, ASSIGNEE, &C., *vs.* L. F. GÉNÉRÉS. } No. 6890.

SAME *vs.* N. O. SAVINGS INSTITUTION. } No. 6886.

SAME *vs.* D'R W'M N. MERCER. } No. 6887.

SAME *vs.* JNO. A. TURNELL. } No. 6888.

SAME *vs.* SAM'L SMITH & CO. } No. 6889.

The above cases were called for re-argument pursuant to order.

Present, Given Campbell, for plaintiff; Finney and Miller, Clarke, Bayne & Renshaw, for defendants.

When, after hearing Given Campbell and H. C. Miller, esquires, ordered, that the further hearing be continued till the 19th instant at 11 a. m.

Hearing and submission of case.—Extract from the minutes, January 19th, 1874.

15 R. K. WOODS, ASSIGNEE, &C., *vs.* L. F. GÉNÉRÉS. } No. 6890.

SAME *vs.* N. O. SAVINGS INSTITUTION. } No. 6886.

SAME *vs.* D'R W'M N. MERCER. } No. 6887.

SAME *vs.* JNO. A. TURNELL. } No. 6888.

SAME *vs.* SAM'L SMITH & CO. } No. 6889.

The above causes were resumed, and, after hearing further argument, the court took time to advise.

Judgment.—From judgment-book, March 7th, 1874.

Circuit court of the United States, fifth circuit and district of Louisiana.
November term, 1873.

NEW ORLEANS, *Tuesday, March 3rd*, 1874.

Court met pursuant to adjournment.
Present, Hon. W. B. Woods, circuit judge.
" Hon. E. H. Durell, district judge.

R. K. WOODS, ASSIGNEE, &C., *vs.* LOUIS F. GÉNÉRÉS. } No. 6890.

16 For reasons orally assigned by the court, it is ordered, adjudged, and decreed that judgment be entered for the defendants, with costs.

Judgment rendered March 3rd, 1874.
Judgment signed March 7th, 1874.
(Signed) E. H. DURELL, *Judge.*

Statement of facts by the court.—Filed June 16th, 1874, nunc pro tunc, as of March 3rd, 1874.

U. S. circuit court, district of Louisiana.

ROB'T K. WOODS, ASSIGNEE, &C., *vs.* L. F. GÉNÉRÉS. } No. 6890.

This case came up this day for trial.

Present, Given Campbell for plaintiff, and Clarke, Bayne & Renshaw for defendants.

After hearing argument and evidence, and upon counsel filing a stipulation for the waiver of the jury, the court finds the following facts, to wit:

ROBERT K. WOODS, ASSIGNEE, &C., *vs.* L. F. GÉNÉRÉS. } No. 6890.

17 Defendant is holder of certificate of indebtedness of the State of Louisiana, No. 17, for forty-three hundred and twenty-two $\frac{72}{100}$ dollars, pledged to him on the 2d December, 1870, by O'Fallon & Hatch, to secure their promissory note dated 2d December, 1870, for twenty-five hundred dollars, and eight per cent. per annum interest after ninety days, its maturity, payable to their order, and endorsed in blank, and any renewals of said note.

That said note was from time to time renewed until August 7th, 1871; a note for twenty-five hundred dollars was given in final renewal, payable ninety days after date, which was unpaid at the times hereinafter mentioned and still remains unpaid in defendant's hands; that said notes were acquired by defendant in due course of business and for a valuable consideration.

That the thing pledged is that claimed in plaintiff's petition.

That O'Fallon & Hatch were decreed bankrupts on the 27th November, 1871, by the United States district court for the State of Missouri.

That Leonard Matthews was, by an ex-parte order, appointed receiver, as follows:

United States district court, eastern district of Missouri. In bankruptcy.

IN THE MATTER OF JAMES J. O'FALLON AND Samuel A. Hatch, bankrupts. } No. 949.

At S't Louis, in said district, Saturday, 2d December, A. D. 1871.

This day comes Archie Woods and William H. Matthews, petitioning creditors herein, by their attorneys, Mess'rs Heudershott & Chandler, and present to the court their petition, heretofore filed herein, praying for the appointment of a receiver of the estate and effects of said bankrupts for the reasons and subject to the terms and conditions in said petition stated.

And the court having considered said petition and being fully advised in the premises, it is ordered that Leonard Matthews, esquire, of the city and county of S't Louis, in said district, be, and he is hereby, appointed receiver of the estate and effects of the copartnership composed of said James J. O'Fallon and Samuel A. Hatch, and also of the individual estate and effects of said bankrupts respectively.

And the said Matthews having filed a bond herein, with sureties approved by the court, in the sum of two thousand dollars, he is here-
19 by ordered to take possession of the goods, property, and effects of the said bankrupts, both of the said copartnership and of said O'Fallon & Hatch individually, and the same hold until the further order of this court.

And it is further ordered that, until the further orders of this court herein, the said receiver be authorized to ask, demand, and receive, from any and all persons from whom the same may be due and owing, any and all sum or sums of money and any and all property of what kind soever belonging to said bankrupts, either as members of said copartnership or individually; also to ask for, demand, and receive any and all books, papers, and accounts of any kind whatsoever belonging to said firm or to said individuals, bankrupts except such assets, books, papers, and accounts as may be in the possession of Samuel L. James, hereinafter mentioned; and he is further authorized to make all disbursements necessary for the interests of said estate, especially for the proper keeping of certain valuable live-stock belonging to said bankrupts.

And it is further ordered that the order heretofore made by
20 this court, appointing Samuel L. James receiver of the interests of said estate in the State of Louisiana, continue in force, and that he report to and act under the said Matthews, receiver, until the further order of this court. And it is also ordered that said Matthews keep an account of all money by him received and expended in any wise pertaining to this estate, in pursuance of this order.

That, under that order, he came to New Orleans and demanded on the day of January, 1872, the unconditional delivery to him of said certificate of indebtedness; that defendant refused to deliver unless the amount of his note aforesaid was paid to him, but offered to deliver the

certificate or have the same sold provided the amount of his note was left in the hands of M'r Carl Kohn, the agent here, to be retained here until proof was filed in the Missouri court.

That on the 27th day of February, 1872, the district court of the United States for Missouri entered the following order:

21 United States circuit court, eastern district of Missouri. In bankruptcy.

IN THE MATTER OF JAMES J. O'FALLON AND Samuel A. Hatch, bankrupts. } No. 949.

At S't Louis, in said district, Tuesday, 27th February, A. D. 1872.

This day comes Leonard Matthews, receiver herein, and presents to the court his petition this day filed herein, praying an order for the sale of the warrants and certificates of indebtedness of the State of Louisiana which have been pledged for debts by said bankrupts, and the court having heard said petition, and being fully advised in the premises, doth order that the said Leonard Matthews, receiver aforesaid, be, and he is hereby, authorized and empowered to sell and transfer all such warrants and certificates as may be delivered to him for that purpose by the holders thereof, at a price not less than seventy-two (72) per cent. for warrants, and sixty (60) per cent. for certificates, and to receive the proceeds to be by him held subject to the future order of this court, reserving to said holders the same right of liens upon such
22 proceeds as they may have upon said warrants and certificates, and to have the said proceeds applied, as far as necessary, in payment of their debts, upon due proof and allowance of such debts and securities in this court.

That Matthews telegraphed to Carl Kohn as follows:

FEBRUARY 27TH, 1872.

CARL KOHN,
Care of Union National Bank, New Orleans:

Court authorizes me to sell all certificates and warrants that the holders may deliver me, at not less than sixty per cent. for certificates and seventy-two per cent. for warrants, I to hold money until creditors prove their claims in this court. Creditors' lien on proceeds of sale in my hands reserved same as the collaterals.

Act as my agent to receive and sell in my name. Show this to Smith, Générés, and Irwin, and ask them to deliver. Promptness necessary.

(S'g'd) LEONARD MATTHEWS,
Receiver of O'Fallon & Hatch.

That this was communicated by Kohn to defendant, who refused
23 to deliver the said certificate unless so much of the proceeds of sale as would pay his debt was retained here by Kohn, and upon these terms he would proceed to prove his debt, and that he thought it was about time that the warrant should be sold.

That on the 20th day of May, 1872, the plaintiff was appointed and qualified assignee of O'Fallon and Hatch, and received a proper deed of assignment of the bankrupt' assets.

On the 7th day of June, 1872, the following order was entered by the district court of the United States for Missouri:

United States district court, eastern district of Missouri. In bankruptcy.

IN THE MATTER OF JAMES J. O'FALLON AND Samuel A. Hatch, bankrupts. } No. 949.

At S't Louis, in said district, Friday, 7th June, A. D. 1872.

This day comes Robert K. Woods, assignee of the estate of said bankrupts, by Samuel S. Boyd, his attorney, and, on motion of said
24 attorney, it is ordered by the court that said Robert K. Woods, assignee aforesaid, be, and is hereby, authorized to appear in the district court of the United States for the district of Louisiana, and in any and all other courts in the State of Louisiana, and take such action with respect to any demands, suits, or applications therein pending or hereafter instituted at the instance of any person or persons whosoever, as may be necessary, meet, and proper to enable him to defeat any and all attempts to interfere with his rights and duties as assignee aforesaid, or to prevent him from obtaining full, undisturbed, and complete possession and control of the copartnership estate and effects of O'Fallon and Hatch, and also the individual estate and effects of said James J. O'Fallon and Samuel A. Hatch, and to do all and singular that may be meet and proper to obtain possession and control of all the said estates and effects, and books, papers, and documents belonging thereto, and to defeat any interference with his rights and duties as assignee aforesaid, and said assignee is hereby authorized and directed to collect all moneys due to the said copartnership and individual estates, and
25 to adjust and compromise all claims to any effects belonging thereto, and to sell at public or private sale any collaterals belonging to said estates said to be pledged for certain demands against said estates, and now in the possession of persons residing in said State of Louisiana, claiming to be creditors of said estates.

The plaintiff visited New Orleans, arriving there on the 17th June, 1872, and remained there till the 22d of same month. on business connected with the collaterals held by the creditors of O'Fallon and Hatch.

He had a copy of the adjudication in bankruptcy, a copy of the appointment as assignee, a copy of the assignment of bankrupts' effects, and a copy of the order of the United States district court in relation to said collaterals.

He saw defendant and showed him all the papers mentioned.

He had three or four interviews with defendant while in New Orleans.

He demanded of defendant the certificate of indebtedness held by him, which plaintiff claimed belonged to the estate of O'Fallon and Hatch, and defendant refused to deliver same unless plaintiff
26 would pay the debt for which defendant claimed it was held as collateral security, which plaintiff declined to do.

That on the 22d of June, 1872, he handed to defendant the following document, which defendant accepted:

NEW ORLEANS, *June 22d*, 1872.

I hereby authorize and empower Louis F. Générés, of this city, to sell for cash, on the most advantageous terms, the minimum price, however, to be not under sixty-eight cents on the dollar, all the certificates of indebtedness and warrants of the State of Louisiana pledged by O'Fallon and Hatch to the following parties, to wit:

Fifty thousand ($50,000) certificates of indebtedness pledged to D'r W'm N. Mercer, to secure a loan of twenty-five thousand, ($25,000,) past due.

Twenty-five thousand State warrants pledged to John A. Turnell, to secure a loan of twelve thousand five hundred dollars, ($12,500,) past due.

Ten thousand ($10,000) dollars certificates of indebtedness pledged to New Orleans Savings Institution, to secure a loan of five thousand ($5,000) dollars, past due.

Four thousand three hundred and twenty $\frac{72}{100}$ ($4,320.72) dol-
27 lars certificates of indebtedness pledged to L. F. Générés, to secure a loan of twenty-five hundred, ($2,500,) past due.

The amounts realized from these sales to be deposited with the parties holding the pledges, subject to all rights which they have upon said certificates & warrants, and without prejudice to the rights of either party or of any party claiming surplus until their respective claims have been proved before a register in bankruptcy and allowed; said sale to be made within a reasonable time. M'r Générés to be entitled to a commission of one-fourth of one per cent. on the gross amount of the warrants.

(S'gn'd) ROB'T K. WOODS,
Assignee in Bankruptcy of O'Fallon & Hatch.

That sales could not be made at the limit mentioned in said document.

That on the 26th day of August, 1872, plaintiff wrote to defendant, who received the letter, as follows:

S'T LOUIS, *Aug. 26th*, 1872.

L. F. GÉNÉRÉS, Esq.,
New Orleans, L'a:

DEAR SIR: I hereby withdraw the authority which I gave you
28 to sell the Louisiana State warrants held by you and your clients as collateral security for claims vs. O'Fallon & Hatch until the several claims are duly proved before M'r Register Lucien Eaton, of this city, and allowed by him under the bankrupt law, when a price may be agreed upon.

Very truly,
(S'gn'd) ROB'T K. WOODS,
Assignee of O'Fallon & Hatch, Bankrupts.

That during December, 1871, and January, 1872, certificates could be sold in the market of New Orleans at fifty cents on the dollar.

That on the 27th day of February, 1872, certificates could be sold at sixty-one cents on the dollar.

That during March, 1872, they were worth sixty-five cents on the dollar.

That defendant has not filed proof of his claim against O'Fallon & Hatch with the district court of Missouri, or the register, or assignee.

And now, in consideration of the foregoing facts, it is ordered, adjudged, and decreed that judgment entered in favor of the
29 defendant, with costs.

(Signed) E. H. DURELL, *Judge.*

Plaintiff's bill of exceptions.—Filed June 16th, 1874, nunc pro tunc, as of March 3rd, 1874.

U. S. circuit court, district of Louisiana.

R. K. WOODS, ASSIGNEES OF O'FALLON AND HATCH, *vs.* L. F. GÉNÉRÉS. } No. 6890.

Be it remembered that at the argument of this cause, after the defendant had offered in evidence, without objection, the note and act of pledge

referred to in his answer, filed in this cause, the counsel of the plaintiff moved the court to reject the note and act of pledged aforesaid from consideration, because the said note had never been proved up against the estate of O'Fallon & Hatch, in accordance with the bankrupt law, and ought not to be recognized as a debt against said estate in this suit, which motion the court refused, and admitted same in evidence;
30 to which the plaintiff then and there excepted, and presented this bill of exceptions, and prays that the same may be signed and sealed by the court as of date of March 3rd, 1874.

(Signed) E. H. DURELL, *Judge.*

Motion and order making Yeatman & Moore parties plaintiffs.—Entered and filed April 14th, 1875.—Extract from the minutes April 14th, 1875.

Circuit court of the United States, fifth circuit and district of Louisiana, November term, 1874.

NEW ORLEANS, *Wednesday, April 14th,* 1875.

Court met pursuance to adjournment.

Present, Hon. W. B. Woods, circuit judge.

ROB'T K. WOODS, ASSIGNEE, &c., *vs.* L. F. GÉNÉRÉS. } No. 6890.

SAME *vs.* N. O. SAVINGS INSTITUTION. } No. 6886.

SAME *vs.* D'R W'M N. MERCER. } No. 6887.

SAME *vs.* JOHN A. TURNELL. } No. 6888.

SAME *vs.* SAM'L SMITH & CO. } No. 6889.

31 On motion of Given Campbell, att'y for plaintiff in aforesaid causes, and upon suggesting to the court that the plaintiff in said suits, Robert K. Woods, died on the 14th of February, 1874, and that James E. Yeatman and James C. Moore, both of Saint Louis, Missouri, were duly appointed and qualified as his successors in the office of assignees of aforesaid bankrupt estates, as will appear from a duly-certified copy of the deed of assignment to them from the Hon. Samuel Treat, judge of the district court of the United States for the eastern district of Missouri, which deed is herewith filed as Exhibit A, hereto attached:

Ordered, that said James E. Yeatman and James C. Moore, assignees as aforesaid, be made parties plaintiffs herein, instead of said Woods, and that they be authorized to prosecute these suits as plaintiffs.

Deed of assignment.—Filed with motion, as "Exhibit A," April 14th, 1875.

In the district court of the United States for the eastern district of Missouri. In bankruptcy.

IN THE MATTER OF THE COPARTNERSHIP of O'Fallon & Hatch, and of James J. O'Fallon & Samuel A. Hatch, individually, bankrupts. } No. 949.

32

The court having, on this the twenty-fourth day of February, A. D. eighteen hundred and seventy-four, made the following order in the above-entitled matter, to wit:

The death of Robert K. Woods, assignee of the copartnership estates of O'Fallon & Hatch, a copartnership heretofore composed of James J. O'Fallon and Samuel A. Hatch, and assignee also of the individual estates of said O'Fallon & Hatch respectively, having been duly suggested to the court by James E. Yeatman, co-assignee of said estates:

It is, on motion of said Yeatman, ordered, that James C. Moore be appointed co-assignee of said Yeatman, and that said Yeatman and Moore be, and they are hereby, appointed, confirmed, and approved as assignees of the estates aforesaid, so far as the same remain undisposed of.

Now, therefore, know all men by these presents that James E. Yeatman and James C. Moore, of the city of S't Louis, in the county of Saint Louis and State of Missouri, have been duly appointed assignees in said matter.

33

Now, therefore, I, Samuel Treat, judge of said district court, by virtue of the authority vested in me by the 14th section of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, do hereby convey and assign to said James E. Yeatman and James C. Moore, assignees as aforesaid, so far as the same have been heretofore undisposed of, all the estate, real and personal, of the said copartnership of O'Fallon & Hatch and of the said James J. O'Fallon and Samuel A. Hatch, bankrupts aforesaid, including all the property of whatever kind of which they were possessed or in which they were interested or entitled to have on the ninth day of September, A. D. 1871, with all their deeds, books, and papers relating thereto, excepting such property as is exempted from the operation of this assignment by the provisions of said section of said act:

To have and to hold all the foregoing premises to the said James E. Yeatman and James C. Moore and their heirs forever. In trust, nevertheless, for the use and purposes, with the powers, and subject

34

to the conditions and limitations set forth in said act.

In witness whereof I, Samuel Treat, judge of said court, have hereunto set my hand and caused the seal of said court to be affixed this twenty-fourth day of February, A. D. 1874.

[SEAL.] (Signed) SAMUEL TREAT.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, Joseph H. Clark, clerk of the district court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto annexed to be a true copy of the deed of assignment to J. E. Yeatman and J. C. Moore, in the matter of James J. O'Fallon and

Samuel A. Hatch, bankrupts, in bankruptcy, as fully as the same remains on file and of record in said matter in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of S't Louis, in said district, this 9th day of April, in the year of our Lord eighteen hundred and seventy-five.

[SEAL.] (Signed) JOSEPH H. CLARK,
Clerk of said Court.

35 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, Samuel Treat, judge of the district court of the United States in and for the eastern district of Missouri, hereby certify that Joseph H. Clark, whose signature appears to the within certificate, is, and was at the date thereof, the clerk of said court, and that said certificate is in due form.

In witness whereof I hereunto subscribe my name at office in the city of Saint Louis, in said district, this 9th day of April, in the year of our Lord eighteen hundred and seventy-five.

(Signed) SAMUEL TREAT.

Motion and order granting writ of error.— Extract from the minutes, April 15th, 1875.

Circuit court of the United States, fifth circuit and district of Louisiana.
November term, 1874.

NEW ORLEANS, *Thursday, April 15th*, 1875.

Court met pursuant to adjournment.
Present, Hon. W. B. Woods, circuit judge.

R. K. WOODS, ASSIGNEE, &C., JA'S E. YEATMAN & JA'S C. MOORE, assignees of O'Fallon & Hatch, substituted,
vs.
L. F. GÉNÉRÉS. } No. 6890.

36 On motion of Given Campbell, attorney for plaintiffs in this cause, and upon suggesting to the court that the said plaintiffs feel aggrieved by the final judgment rendered in said cause against them on the 3rd day of March, 1873, and signed on the seventh day of March, 1873, and that they believe there is error to their prejudice in said judgment rendered as aforesaid, and that they desire a writ of error from said judgment, returnable in the Supreme Court of the United States on the second Monday of October next, it is ordered that the plaintiffs in said cause be allowed a writ of error as prayed for, on giving bond for the sum of five hundred dollars for costs, with good and solvent security.

Bond for writ of error.—Filed April 15th, 1875.

United States circuit court, district of Louisiana.

JA'S E. YEATMAN & JAMES C. MOORE, ASSIGNEES of O'Fallon & Hatch, plaintiffs in error,
vs.
LOUIS F. GÉNÉRÉS, DEFENDANTS IN ERROR. } No. 6889.

Know all men by these presents that we, James E. Yeatman and

37 James C. Moore, assignees of O'Fallon & Hatch, and the individual members thereof, James J. O'Fallon and Samuel A. Hatch, bankrupts, as principals, and Wm. H. Matthews as surety, are held and firmly bound unto L. F. Générés and F. A. Woolfley, clerk of the circuit court of the United States for the fifth judicial circuit and district of Louisiana, in the full and just sum of five hundred dollars, to be paid to the said L. F. Générés and F. A. Woolfley, clerk of said court, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this fifteenth day of April, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court wherein James E. Yeatman and James C. Moore, assignees of O'Fallon & Hatch, are plaintiffs, and L. F. Générés defendant, judgment was rendered against the said plaintiffs; and the said plaintiffs having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judg-
38 ment in the aforesaid suit, and a citation directed to the said L. F. Générés, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said James E. Yeatman and James C. Moore, assignees of O'Fallon and Hatch, shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) JAMES E. YEATMAN, [L. S.]
" JAMES C. MOORE, [L. S.]
Assignees of O'Fallon & Hatch.
(Signed) W'M. H. MATTHEWS. [L. S.]

Sealed and delivered in the presence of—
(Signed) F. B. VINOT.

Approved.

W. B. WOODS, *Judge.*

Assignment of errors.—Filed April 16th, 1875.

U. S. circuit court, district of Louisiana.

R. K. WOODS, ASSIGNEE, &C., JAMES E. YEATMAN & JAMES C. MOORE, assignee' of O'Fallon & Hatch, substituted,
vs.
LOUIS FLORIVAL GÉNÉRÉS. } No. 6890.

39 Now comes James E. Yeatman and James C. Moore, assignees of O'Fallon and Hatch, in bankruptcy, made plaintiffs herein, and say that there is manifest error in the judgment of the circuit court in said cause, and they assign as errors in said judgment—

1. That upon the pleadings and finding of facts by the judge of said court sitting as a jury, and the laws of the land, there ought to have been a judgment for the plaintiffs, as prayed for in his petition in said cause.

2d. There was error in the refusal of the court to reject from its consideration the note and act of pledge referred to in the answer of the defendants and stated in the bill of exceptions taken by plaintiff at the trial and made part of the record herein.

3rd. Because the court erred in recognizing the defendants as creditors of said estate of O'Fallon & Hatch, they having failed and refused to prove up their debts in bankruptcy.

4th. Because upon the facts found by the court, the property sued for in plaintiffs' petition being the property of the bankrupt estates
40 of O'Fallon & Hatch, ought by law to have been delivered to the proper officer of the district court of the United States for the eastern district of Missouri by defendant; and the court erred in deciding that the refusal of defendant to deliver to such agent said property upon proper demand made was justifiable and not a conversion of the property, as claimed in petition, by defendant.

5th. The court erred in admitting the defendant as creditor of said estate, not having proved their debt according to law.

(Signed) GIVEN CAMPBELL,
Att'y for Plaintiffs.

41 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 40 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Robert K. Woods, assignee, &c., James E. Yeatman, and James C. Moore, assignees of O'Fallon and Hatch, bankrupts, versus L. F. Générés, No. 6890 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 10th day of August, A. D. 1875.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, W. B. Woods, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 10th day of August, A. D. 1875.

W. B. WOODS, *Judge.*

42 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court before you, or some

of you, between James E. Yeatman and James C. Moore, assignees of O'Fallon and Hatch, and the individual members thereof composing said firm, to wit, James J. O'Fallon and Samuel A. Hatch, bankrupts, plaintiffs, and L. F. Générés, defendant, a manifest error hath happened, to the great damage of the said James E. Yeatman and James C. Moore, assignees of O'Fallon and Hatch, and the individual members of said firm, bankrupts, as by their complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court of the United States, this 15th day of April, in the year of our Lord one thousand eight hundred and seventy-five.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

(Indorsed:) United States circuit court. No. 6890. James E. Yeatman & Ja's C. Moore, assignees of O'Fallon & Hatch, pl'ffs in error, versus L. F. Générés, defendant in error. Writ of error. Filed April 15, 1875. F. B. Vinot, d'y cl'k.

43 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Louis Florival Générés, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein James E. Yeatman and James C. Moore, assignees of O'Fallon and Hatch, and the individual members thereof composing said firm, to wit, James J. O'Fallon and Samuel A. Hatch, bankrupts, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 16th day of April, in the year of our Lord one thousand eight hundred and seventy-five.

W. B. WOODS, *Judge.*

44 (Indorsed:) United States circuit court. No. 6890. Ja's E. Yeatman & Ja's C. Moore, assignees of O'Fallon & Hatch, pl'ffs in error, vs. L. F. Générés. Citation.

Marshal's return.

Received Apr. 16, 1875, by the U. S. marshal, and on the 19th day of April, 1875, served a copy hereof on L. F. Générés, within named, by handing the same to him in person in this city.
N. O., May 11, '75.

S. W. REED,
D'y U. S. Marshal.

S. W. Reed, sworn, says: I am a deputy U. S. marshal, and made service of the within citation as stated in my return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to and subscribed before me this 11th day of May, 1875.

F. B. VINOT,
U. S. Comm'r.

(Indorsement on cover:) No. 193. James E. Yeatman & James C. Moore, assignees in bankruptcy of James J. O'Fallon & Samuel A. Hatch, composing the firm of O'Fallon and Hatch, pl'ffs in error, vs. L. F. Générés. Louisiana C. C. U. S. Filed 12th October, 1875.

Supreme Court of the United States,

March Term, 1877.—No. 193.

JAMES E. YEATMAN & JAMES C. MOORE, Assignees in Bankruptcy of O'Fallon & Hatch,

vs.

L. F. GÉNÈRES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF LOUISIANA.

GIVEN CAMPBELL,
Attorney for Appellants.

ST. LOUIS:
C. R. BARNS, BOOK AND JOB PRINTER, 213 PINE STREET.
1877

Supreme Court of the United States.

October Term, 1877.—No. 193.

JAMES E. YEATMAN & JAMES C. MOORE, Assignees in Bankruptcy of O'Fallon & Hatch.

vs.

L. F. GÉNÉRES.

Appeal from the Circuit Court of the United States, District of Louisiana.

THE PLEADINGS STATED.

On the 18th of January, 1873, Robert K. Woods, Assignee in bankruptcy of James J. O'Fallon and Samuel A. Hatch, and of the firm of O'Fallon & Hatch, bankrupts under a decree of the District Court of the United States for the Eastern District of Missouri, filed his petition in the Circuit Court for the District of Louisiana, for the recovery of $3,115, the value of certificates of indebtedness, which he alleged were, at the date of the adjudication in bankruptcy, the property of the bankrupts, and passed by assignment to him; that at the time they were in possession of the defendant, who had no title to them; that possession had been demanded from the defendant on several occasions by a receiver appointed by the Missouri Court, and by plaintiff, and possession was refused; but defendant unlawfully converted them, to the damage of the plaintiff in the sum of $3,115, their value at the date of conversion with prayer for judgment and *general relief*.

To this the defendant answered admitting the possession of the certificate of indebtedness of the State of Louisiana described in the petition, for 4322.72 but alleging that he held it as pledgee, under a pledge from O'Fallon & Hatch of date 2d December, 1870, to secure a note of same parties, dated August 7, 1871, due November 7th, 1872: that the note and pledge were taken for value in due course of business, and asked for judgment.

Upon the trial a jury was waived and the cause tried by the court, who, upon the facts found, rendered judgment for defendant. Subsequently, Robert K. Woods died, and the present plaintiffs were made parties plaintiff.

The facts are meagrely stated in the finding of the court and the only controversy is upon the law of the case.

THE ASSIGNMENT OF ERRORS AND GROUNDS UPON WHICH A REVERSAL OF THE DECREE SHOULD BE HAD, AND A DECREE IN FAVOR OF PLAINTIFFS RENDERED IN THIS COURT.

1. That upon the pleadings and finding of facts by the court, and the law judgment ought to have been rendered for plaintiff in said cause.

2. The court erred in overruling the motion of plaintiff for the rejection from the consideration of the court of the note and pledge mentioned in the bill of exceptions, and in admitting defendant as a creditor of said estate before it had proved its debt in bankruptcy.

The facts as found by the court may be briefly stated as follows: O'Fallon & Hatch were adjudged bankrupt November 27, 1871. Previously they had borrowed money from the defendant and pledged the certificates to secure their note due January 21, 1872, for $5,000. After this Leonard Mathews was appointed receiver of the estate of the bankrupts by Judge Treat, of the District Court of Missouri. Under that appointment he went to New Orleans, Louisiana, the domicil of defendant, and demanded of him the certificate, which was refused. This was in January, 1872.

That subsequently, on the 27th day of February, after the maturity of the note held by the defendant, the District Court at St. Louis, upon the petition of the receiver, made another order

authorizing and empowering him to sell and transfer all such warrants and certificates as might be delivered to him, at a price not less than 72 per cent. for warrants and 60 per cent. for certificates, and receive the proceeds, to be held by him subject to the order of the Court, and reserving to the holders all liens upon the proceeds upon due proof of their debts.

On the same day the receiver notified the defendant of this order to sell, and demanded the possession of the certificate. Defendant refused to deliver, unless enough of the proceeds to pay his debt were left in the hands of one Kohn, in Louisiana. If this were done he agreed to deliver and prove his debt. This was not done. The certificates on that day were worth on the market 61 per cent., and during March, 1872, were worth on the market 65 per cent.

On the 20th of May Robert K. Woods was appointed assignee. On the 7th of June, 1872, the District Court at St. Louis, Mo., authorized and directed him to sell at public or private sale any collaterals belonging to the estates he represented, said to be pledged and in possession of persons in Louisiana claiming to be creditors of the bankrupts. The assignee came to New Orleans and demanded of defendant the collaterals, which defendant refused to deliver unless the assignee would pay his note, which the assignee refused to do. Then the assignee authorized Generes, who was a broker, to sell the collaterals at not less than 68 per cent. on certificates of indebtedness, and this sale could not be made, and on August 26, 1872, this was revoked. Defendant never proved his claim.

POINTS OF LAW AND CITATION OF AUTHORITIES.

FIRST. *The filing of the petition in bankruptcy at once brings the property of the insolvent into the bankruptcy court, and places it in its custody and under its protection as fully as if actually brought into the visible presence of the Court.*

This proposition was affirmed under the act of 1841—see Houston vs. City Bank of New Orleans, 6 Howard 486. Norton's Assignees

vs. Boyd, 3 Howard 426,—and such is the doctrine of the court of the country under the present law.

See *In re* Sacchi 6. National Bankrupt Reporter, p. 498.
In re Davis vs. Anderson, 6 N. B. R. 150.
In re Brinkman, 7 N. B. R. 425.

Again, the leading object of the law is the speedy and equal distribution of the bankrupt estate among his creditors.

See Avery vs. Hackley, 20 Wallace 413.
Baily vs. Glover, 21 Wallace 346.

From this it follows that in order to effectually make such distribution, the court in charge should know who the creditors are. At the time of the trial of this cause in the court *a quo*, the current of authority was in favor of the doctrine that secured creditors must prove their debts in the forum of the Bankruptcy. While this has been questioned, I believe that this court has never directly decided this question. At the trial, objection was made to the consideration by the court of the note and pledge offered by the defendant, which objection was overruled and the point saved in a bill of exceptions.

It has been frequently decided that secured creditors should prove their debts.

See *In re* Bridgeman, 1 N. B. R. 312.
In re Henry C. Bolton, do. 370.
In re Biglow & Kellogg, do. 632.
In re Taylor R. Stewart, do, 278.
In re Ruehle, do. 557.
In re Snedaker, 3 do. 629.
Cavis vs. Anderson, 6 do. 579.
In re Grinnell 9 do. 29.
In re Thomas Morrison 10 do. 105.
See also North Carolina Rep., Blum., Ex'r vs. Ellis.

Such would seem to be the fair deductions from the act itself.
See R. S. 5075, 5076; 5077.

If this were not required, a dishonest debtor could securely conceal all his property under cover of fraudulent pledges, and utterly defeat the object of the law. The point made in the court below

was that this defendant had been requested to prove up its debt as a secured creditor and had refused, and hence should not be recognized as a creditor in this action. It may be, however, said that under present decisions this point is not much relied upon in this court, though not abandoned.

Again it is believed that the bankruptcy of O'Fallon & Hatch changed the relation of the parties and raised up new duties on the part of those dealing with the assets of the bankrupt estate. The *fiat* in bankruptcy *fixed* the condition of the parties, and thereafter the property of the bankrupts of every character was in *custodea legis*, and its *managemeut* in the hands of the court in bankruptcy, whose duty was to take immediate steps to protect and save the assets in furtherance of the ends of the law, i. e. the speedy and equal distribution among the creditors.

See R. S. § 5,065, Young vs. Bank of Bengal, L. R. 3 C. P. 444.
Astley vs. Guerney L. R. 4 C. P. 714.

The record shows that the learned judge of the District Court for the Eastern District of Missouri, aware that certain persons in New Orleans, of whom defendant was one, held assets of the estate under a claim of pledge, and that these assets were of a fluctuating character, took prompt steps to save them for the creditors; that he appointed an agent of the court, Leonard Matthews, to receive and sell these assets, reserving at the same time all rights which might be claimed against them, under the pledge, upon distribution; that defendant was notified of the action and wish of the court; that the time to sell had come, and that the court did dot desire to hold such speculative assets and imperil the surplus; that there was at that time a margin over the amount claimed as a lien, and ready sale could be made upon the New Orleans market. It seems plain that under these circumstances,

THIRD. *The law imposed a plaiu duty upon the defendant as pledgee to sell the collaterals and save the margin for the estate.*

1. What were the relations between the parties?

The certificates, although encumbered, were a portion of the estate, and the court certainly had the management of the property

so far as the surplus was concerned. The defendant had due notice of this, and the relation he bore to the court, representing the dual interest of the bankrupt and the unsecured creditors, was that of a sort of mandatary. The Louisiana code provides that whoever undertakes the business of another, though gratuitously, is responsible for any neglect of duty, A. A. 2,971, 2,972.

By article 2,995 every person is responsible for the damage he occasions, not merely by his act, but by his negligence, his imprudence or his want of skill.

Article 2,294 prescribes that "Every act whatever of man, that causes damage to another, obliges him, by whose fault it happened, to repair it."

Under articles 3,132 and 3,135 of the code the pledgee was forbidden to appropriate the pledge to himself.

With these provisions it would seem that if bankruptcy had not intervened, and defendant had been asked at maturity of the debt to sell the collaterials, when a margin could be made by sale, and the defendant refused, he would be liable for the damage.

And it would seem that the principle should apply with greater force in favor of the plaintiffs in this case. The defendant had express notice of the desire of the court in custody of the estate, that a sale should be made at once. His debt was mature; there would have been a handsome margin realized by sale. There was a ready market, the collaterals were of a highly unsteady character. He knew that the court had no authority to speculate upon them, and that the object of the bankruptcy was to distribute the estate among the creditors speedily. His duty to the court and the estate was that of a prudent administrator under the circumstances acting for the best interest of his principal.

See Story on Bailments § 332.

Wharton on Negligence, ed. 1874, § 670, says pawnee must exercise the diligence of a good business man, when in his particular circumstances.

Story says that a pawnee is liable for losses and increments when he has refused or omitted to perform his duty. Story on Bailments, § 334.

Equity will compel a sale by pawnee when it is clear that the property will produce more than enough to satisfy the debt. Story on Bailments, § 320.

Story Eq. Jurisprudence, §§ 1031-32-33—such, says Story, is the civil law, and such is the law of Louisiana.

See Williams v. the Schooner St. Stephen, 2 N. S. p. 24. where the court held "that it results from the contract, that if the debtor has any rights in the thing, he should have the means of enforcing them; and it is the only means of preventing injustice and oppression. If the creditor is not paid, the law makes it his duty to apply to a court of justice, and have the object appraised or sold. If he will do neither, but continue to hold in his possession the collaterals of greater value than his debt, we are satisfied that the debtor or those in his right can compel him to comply with that which the law declared to be his duty to do."

We have seen that the code forbids the creditor to appropriate the pawn. If he were permitted to hold securities of greater value than the debt, until by fluctuations of the market they were reduced below the debt, and then sell them, he could practically appropriate the pawn.

His duty to the pledger is that of *diligens paterfamilias*.

See Hartman v. Bemiss, 16 Louisiana Rep. 145.

Crocker v. Monrose, 18 Louisiana Rep. 556.

The Commercial Bank of New Orleans v. Marten, *et als*, 1 La. Annual, 444.

Godfrey Stancil vs. Gilmore & Henderson, 6 La. Annual, 763.

Evans vs. Hatcher, 10 La. Annual, p. 99.

In Tyler on Usury, p. 610, it is laid down as a general rule of law, that where a person receives bonds and notes for collection as collateral security for a debt, he is bound to use due diligence, and if they are lost through his negligence by the insolvency of the makers, he is chargeable with the amount.

In re Grinnell 9, N. B. R., 137, Judge Blatchford held that where stock was held to secure call loans, the pledgee need not obtain an order of court in bankruptcy to sell the stock pledged, and pay the surplus into court for the benefit of whom it may concern.

See also *In re* Daniel, 13 N. B. R.

In Louisiana, a wrongful assumption of a right over the property of another is a conversion—and all who convert the property of another are in bad faith.

See 7 Louisiana Annual 487, Badilo vs. Tio.

2 do 281, The Draining Co. vs. Lizardi et als.

The refusal, neglect, or omission of defendant to sell when his debt was due, and there was a margin in the collaterals, at the instance of the Missouri court who notified him of the desirability of sale, was a conversion of the surplus at least, for which defendant became liable under the law of Louisiana, and the bankrupt law, to the assignee whose title related back.

In New York it has been held that in such a case the defendant could be held for the highest price on the market up to the day of trial, which the record in this case shows was about sixty-five cents on the dollar.

Under the code practice in Louisiana, there are no distinctions in actions, they are all civil actions, and while Trover is unknown, yet an equitable action for damages in such a case is allowed under the flexible system in that State, wherein the court can grant suitable redress; and it is submitted that upon the facts found there should have been a judgment under any circumstances for the amount of surplus upon the pawn in the hands of the defendant on the 28th day of February, 1872, the date of the demand by the receiver of the court as for a conversion on that day.

It is further suggested that the finding of the court does not show that the act of pledge was recorded C. C. 3125.

GIVEN CAMPBELL,

Attorney for Appellants.